AN APPEAL

BY THE

STATE OF INDIANA

TO

CONGRESS

TO MAKE PROVISION FOR THE PAYMENT OF CERTAIN OF HER WAR EXPENSES.

THE CLAIM OF INDIANA

AS IT WAS

PRESENTED BY THE STATE

TO THE

TREASURY DEPARTMENT OF UNITED STATES,

WITH THE

EVIDENCES IN SUPPORT OF THE SAME, AND WHICH CLAIM IS NOW PRESENTED TO CONGRESS FOR ITS ACTION THEREON.

THE UNITED STATES,

To THE STATE OF INDIANA, *Dr.*

For amount of discount on $2,000,000 of Indiana War Loan Bonds	$243,107 51	
For amount expended for printing said Bonds, and putting them on the market, including brokerage, and salaries and expenses of Loan Commissioners	1,685 39	
For amount of interest paid on said Bonds to May, 1868	362,186 51	
Total per itemized statements herewith filed		$606,979 41

DISCOUNT ACCOUNT.

INDIANA WAR LOAN BONDS.

Principal of the Loan	$2,000,000 00	
Less Discount	243,107 51	
Amount realized in cash from the Loan		$1,756,892 49

EXPENSE ACCOUNT.

INDIANA WAR LOAN BONDS.

Voucher.		
A. Ray, Brown and O'Boyle, Loan Commissioners	$390 00	
B. Jesse J. Brown, Loan Commissioner	108 00	
C. Jesse J. Brown, Loan Commissioner	503 95	
D. John H. O'Boyle, Loan Commissioner	88 50	
E. James M. Ray, Loan Commissioner	228 17	
F. James M. Ray, Loan Commissioner	64 32	
G. James M. Ray, Loan Commissioner	96 00	
H. Jesse J. Brown, Loan Commissioner	77 45	

J. James M. Ray, Loan Commissioner	23 00
K. Jesse J. Brown, Loan Commissioner	56 50
L. J. H. O'Boyle, Loan Commissioner	49 50
Total	$1,685 39

Original vouchers for above expenses filed with the Auditor of State, are herewith forwarded.

P. S. The above vouchers are numbered in Auditor's office 2347, and were paid out of Military Bond Expense Fund.

INTEREST ACCOUNT.

INDIANA WAR LOAN BONDS.

Paid interest May 1, 1862	$33,645 00
Paid interest October 1, 1862	36,765 00
Paid interest May 1, 1863	36,765 00
Paid interest October 1, 1863	36,765 00
Paid interest May 1, 1864	36,000 00
Paid interest October 1, 1864	35,000 00
Paid interest May 1, 1865	27,480 00
Paid interest October 1, 1865	27,000 00
Paid interest May 1, 1866	25,972 42
Paid interest October 1, 1866	26,973 67
Paid interest May 1, 1867	25,440 00
Paid interest October 1, 1867	8,350 42
Paid interest May 1, 1868	6,030 00
Total	$362,186 51

State of Indiana, ss.:

The undersigned, Governor, Auditor and Treasurer of State, certify that the foregoing account, amounting to six hundred and six thousand nine hundred and seventy-nine dollars and forty-one cents, is correct and just; that the discount charges and interest therein charged has been paid by the State of Indiana in pursuance of an act of the Legislature, entitled "An Act to authorize the Governor to issue Bonds; to appoint a Board of Loan Commissioners, and defining their duties; requiring the Sinking Fund Commissioners to purchase Bonds; defining their duties in relation to the interest received on the same; and levying a tax to meet the payment of the interest and principal of the Bonds to be sold," approved May 13, 1861; that the Bonds of the State were issued in pursuance of said act to the amount of two millions dollars, par value, and that the same were sold, after due notice, at a discount of two hundred and forty-three thousand one hundred and seven dollars and fifty-one cents, as per report of the Loan Commissioners, a printed copy of which is herewith filed and made part hereof; that

the State incurred, and paid in and about the sale of said bonds, including printing, brokerage, salaries and expenses of Loan Commissioners, the sum of one thousand six hundred and eighty-five dollars and thirty-nine cents; and that the State has paid, on account of interest which has accrued on said Bonds up to the first day of May, A. D., 1868, the sum of three hundred and sixty-two thousand one hundred and eighty-six dollars and fifty-one cents.

We further certify that at the outbreaking of the late war, known as the War of the Rebellion, the State Treasury was almost entirely without funds, and that to enable the State to properly respond to the calls of the President of the United States for troops for the common defense of the United States, and to properly raise, organize, arm, equip, subsist, quarter, pay and transport, said troops, it became, and was necessary, to raise money by loan upon the credit of the State, and that, in consequence of said necessity, the Bonds hereinbefore referred to, amounting at their par value to the sum of two millions dollars, were issued and sold as aforesaid, under and by authority of the act aforesaid.

And we further certify that the moneys realized from the sale of said Bonds, amounting to the sum of one million seven hundred and fifty-six thousand eight hundred and ninety-two dollars and forty-nine cents, were set apart as a Military Fund, and that the same were paid out upon proper and duly authenticated vouchers for expenses growing out of the said War of the Rebellion, and incident thereto, and properly chargeable to the United States, to-wit: in raising, organizing, arming, equipping, subsisting, quartering, paying and transporting troops for the military service of the United States.

Wherefore, we claim that the United States is justly indebted to the State of Indiana in the said sum of six hundred and six thousand nine hundred and seventy-nine dollars and forty-one cents, for discount, interest, charges, and expenses incurred and paid for the benefit of the public service, as above set forth.

{STATE SEAL.} Witness our hands and the seal of the State, at Indianapolis, this twenty-sixth day of May, A. D., 1868.

(Signed) CONRAD BAKER,
Lieutenant Governor of Indiana, acting as Governor thereof.

(Signed) NATHAN KIMBALL, Treasurer of State.

(Signed) T. B. MCCARTY, Auditor of State.

Attest:

(Signed) NELSON TRUSLER, Secretary of State.

DECISION OF THIRD AUDITOR REJECTING SAID CLAIM.

8th

INDIANA WAR CLAIMS, ~~XXIII~~ INSTALLMENT—THIRD AUDITOR'S DIFFERENCE SHEEET.

The claim for "interest" paid on "War Loan Bonds," amounting in the aggregate to $362,186.51, disallowed.

Interest can not be allowed by the executive branch of the government in the settlement of any claims against the government, unless authorized by express enactment of the legislative power. The following decision was made by the Second Comptroller, dated October 11, 1867, in reply to letter of the Third Auditor, dated October 2, 1867, as follows:

SIR—A claim has been made by the State of Rhode Island for the refunding of the interest paid by that State in raising money to repay the costs, charges and expenses incurred for enrolling, subsisting, clothing, supplying, arming, equipping, paying and transporting its troops employed in suppressing the recent rebellion, and as similar claims are held by all the loyal States, it is deemed best to submit it to you as an abstract question.

Several opinions of the Attorney General, Comptroller, etc., have been referred to authorizing the allowance of such claims, a brief abstract of which is here given:

1. In Opinions of Attorney General, vol. 1, page 723, Mr. Wirt held that interest, when paid by a State, forms a just claim against the United States. This opinion was given on the act of March 3, 1825, (vol. II, p. 132,) which authorizes the payment of interest, and of course is not authority for such payments when not specifically authorized by law.

2. Attorney General J. J. Crittenden, (vol. 3, p. 635,) held that interest on claims for losses by troops is not allowable.

3. Attorney General Legare, (vol. II, p. 136,) states that the government in general refuses to pay interest in the absence of a special contract.

4. Attorney General Reverdy Johnson held (vol. 5, p. 228 and 231,) that interest has been paid when there was no express provision in the law. This was with reference to the Galphin case, for the payment of which an act was passed August 14, 1848, (vol. 9, p. 739,) but would be an unfortunate precedent to those who would be guided by it in paying interest.

Hon. J. J. Crittenden (vol. 5, p. 455,) held that interest should be allowed the State of Florida upon all expended and obligations contracted for supplies and services of local troops called into service in 1849, by and under the authorities of said States, when it shall appear that said State has paid, lost, or incurred interest on that account.

Hon. E. J. Phelps, Second Comptroller, maintained the same doctrine, (vol. 15, p. 34,) but that was under the clause of the act of February 27, 1851, (vol. 9, p. 573,) that provides for reimbursing Florida for moneys advanced and paid, and for *expenses incurred and obligations contracted* by said State for subsistence, supplies and services of local troops, etc. The words underscored would seem to sanction the construction given to this law by these gentlemen; and are different and much stronger than those used in the act of 1861, which we are now considering, and yet, in view of the uniform action of Congress and the Executive on this subject, I would not have recommended the payment of interest in this case without more specific action by Congress on it.

In the case referred to in your "Digest," pages 32 and 33, the allowance was made to the State of Maine, not under usage, but in accordance with specific provisions of law. See act of February 9, 1859, (vol. 11, p. 382,) directing payment to State of Maine, pursuant to provisions of act of June 2, 1848, (vol. 9, p. 236,) the third section of which provides that in refunding money under the act, etc., it shall be lawful to pay interest at the rate of 6 per cent. per annum on all sums advanced by State, etc. The last reference is to your "Digest," page 101, where it is stated that interest is not allowed, except granted in express terms by act of Congress. When the condition of the country is considered at the time these expenses were made, the heroic efforts of the loyal States to sustain our country in this the time of her greatest trial, it is clear, in my opinion, that Congress should authorize the refunding not only of the interest paid to raise money, but of all expenses, drawbacks, etc., in fact, of every dollar paid by any such State, directly or indirectly, in support of this holy cause, but I am clearly of the opinion that the accounting officers of the Treasury have no power so to refund without the action of Congress.

Respectfully submitted,

JOHN WILSON,
Auditor.

HON. J. M. BRODHEAD,
Second Comptroller.

APPROVAL OF THE SECOND COMPTROLLER OF THE DECISION OF THIRD AUDITOR.

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
October 11, 1867.

SIR—I have the honor to acknowledge the receipt of your report of the 2d inst., in which it appears that "a claim has been made by the State of Rhode Island for the refunding of the interest paid by that State in raising money to defray the costs, charges and expenses incurred for enrolling, subsisting, arming, equipping, paying and transporting its troops employed in suppressing the recent rebellion."

The authorities you cite are clear and positive that interest can not be allowed by the executive branch of the government in the settlement of any claims against the government, unless authorized by express enactment of the legislative power or indubitable inferences from the general terms of a statute. The conditions precedent to the payment of interest in the claims presented are not found in the acts of July 17 and 27, 1861, authorizing the payment of certain State claims, and I therefore concur with you in the reasons adduced against the allowance of the above claim.

Very respectfully, your obedient servant,

(Signed) J. M. BRODHEAD,
Comptroller.

HON. JOHN WILSON,
Third Auditor.

The claim therefore for interest is disallowed—$362,186.51.

APPLICATION OF THE STATE MADE TO THE SECRETARY OF THE TREASURY TO AUTHORIZE THE COMPTROLLER AND AUDITOR TO REVIEW AND RESTATE THE ACCOUNT, AND TO ALLOW THE INTEREST PAID ON HER WAR LOAN BONDS, AND REASONS THEREFOR.

The claim of the State of Indiana for interest paid on her war bonds, issued in 1861, amounting to $362,186.51, it will be seen, therefore, has been disallowed by the Treasury Department.

The bonds were issued under the authority of the act of the Legislature of Indiana of May 13, 1861, which is as follows:

"AN ACT to authorize the Governor to issue Bonds; to appoint a Board of Loan Commissioners, and defining their duties; requiring the Sinking Fund Commissioners to purchase Bonds; defining their duties in relation to the interest received on the same, and levying a tax to meet the payment of the interest and principal of the Bonds to be sold.

[APPROVED MAY 13, 1861.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana,* That for the purpose of obtaining money for repelling invasion, and providing for the public defense, the Governor is authorized to issue two million dollars of Bonds; of which said issue of two million, the sum of two hundred thousand dollars shall be in bonds of the denomination of five hundred dollars each, and the residue of the said issue of two million dollars shall be in bonds of the denomination of one thousand dollars each; all of said bonds drawing interest at the rate of six per cent. per annum, payable semi-annually, on the first days of May and November in each year; said bonds to have coupons, or interest warrants attached; the first

of which shall become due on the first day of May, 1862; the interest which may fall due between the date of the sale and the first day of November, 1861, shall be paid in advance. The bonds shall be made payable to bearer, twenty years after date, the interest payable on presentation and surrender of coupons, as they become due; both bonds and coupons to be payable at the Indiana Agency, in the city of New York.

The bonds shall be signed by the Governor, and countersigned by the Auditor, numbered and registered in the office of the Auditor and Secretary of State, and shall be in the following form in substance:

INDIANA SIX PER CENT. BOND.

	No.	
500	Five Hundred Dollars.	500.
1000	One Thousand Dollars.	1000.

Know all Men by these Presents: That there is due from the State of Indiana, unto the bearer, the sum of ———— dollars, with interest at the rate of six per cent. per annum, payable semi-annually, on the first days of May and November of each year, at the Indiana Agency, in the city of New York, on presentation and delivery of the proper coupons, which appear on the margin hereof. The principal of this bond is to be paid in twenty years from the date hereof, at the Indiana Agency in the city of New York, and is one of an issue of two millions of dollars of bonds issued by the State of Indiana, in denominations of five hundred dollars and one thousand dollars each, pursuant to an act of the General Assembly, approved —— ——, 1861, entitled "An act to authorize the Governor to issue bonds; to appoint a Board of Loan Commissioners, and defining their duties; requiring the Sinking Fund Commissioners to purchase bonds; defining their duties in relation to the interest received on the same; and levying a tax to meet the payment of the interest and principal of the bonds to be sold."

FORM OF COUPON.

The State of Indiana will pay the bearer, on the ——— day of ————, at the Indiana Agency in the city of New York, ——— dollars, it being the semi-annual interest on her bond, No. —.

Sec. 2. For the purpose of negotiating said bonds, Hugh McCulloch, James M. Ray and John H. O'Boyle are hereby appointed a Board of Loan Commissioners, who shall each receive as a compensation for their services as such commissioners, five dollars per diem, for each day they, or each of them, may be actually engaged in negotiating said loan, together with their expenses; and the Governor shall deliver said bonds, when prepared, signed, and registered as aforesaid, to said commissioners, taking their receipt therefor,

with the number and denomination of each bond, and shall file said receipt with the Auditor of State; which said commissioners shall dispose of said bonds, as the wants of the treasury may require, or as, in their judgment, will promote the best interests of the State; and the money arising therefrom, together with all exchange, and any premium which may accrue, or may be received by said commissioners, except so much thereof as the Treasurer of State may require for payments in the city of New York, shall be paid by said commissioners into the State treasury as soon as received by them, taking the receipt of the Treasurer of State therefor, and file said receipt with the Auditor of State, who shall charge said Treasurer therewith; and the said Board of Loan Commissioners shall, on the first days of August, November, February, and May, of each year, file with the said Auditor of State a report containing the number and denomination of bonds sold and the price received therefor, and the time when sold; and that said Loan Commissioners shall each file with the Auditor of State a bond in the penalty of two hundred thousand dollars, to be approved by the Governor, for the faithful discharge of their duties, and the prompt payment to the proper officer of all moneys that may come into their hands as such commissioners; and the Treasurer of State shall file his receipt for the amount with the Auditor of State, designating therein the amount of each denomination of bonds sold, and the amount obtained for the same, who shall charge the Treasurer therewith.

SEC. 3. The Board of Sinking Fund Commissioners are hereby directed to purchase of said Loan Commissioners said bonds, at par, to the extent of the money they may have on hand subject to distribution for the purpose of being loaned, and the interest, when paid by the State upon said bonds so purchased, shall be disposed of in the same manner as the interest arising from loans of the Sinking Fund to individuals.

SEC. 4. In case a vacancy or vacancies shall occur in said Board of Loan Commissioners, before said bonds are disposed of, or in case any of said commissioners shall refuse to serve as such, it shall be the duty of the Governor to appoint some suitable person or persons to fill such vacancy or vacancies, and said appointee or appointees shall hold his or their office until the next meeting of the Legislature, either in general or special session, and such appointee or appointees shall give bond with the original commissioners.

SEC. 5. For the purpose of paying the interest semi-annually, and the final payment of the principal at maturity, on the bonds in the first section mentioned, an annual tax of five cents on each one hundred dollars in value of the taxable property of this State is hereby levied, commencing in the year 1861, and the excess of money collected by said tax, each year, after paying the interest as it becomes due, shall be paid to the Sinking Fund Commissioners, who shall purchase these bonds if they can procure them on reasonable terms, and if not, then to invest the same in other Indiana State stocks; said commissioners keeping a record of the number and

amount, and price paid for such bonds, and from whom purchased; at the first session of the Legislature thereafter, said commissioners shall report the amount and number of such bonds or stocks, the price paid for the same, and from whom purchased, and rendering an account of such funds received since their last report; and immediately thereafter it shall be the duty of the Committee on Finance in the Senate, and Committee of Ways and Means in the House of Representatives, to count said bonds and examine the same, and said Sinking Fund Commissioners shall, then and there, in the presence of said committees, destroy said bonds and stocks, keeping a record and description of such destroyed bonds and stocks; and for the final payment of said bonds, with the interest thereon, the faith of the State is irrevocably pledged.

SEC. 6. In case it becomes unnecessary to sell all of said bonds, such unsold bonds shall be returned to the Auditor of State, who shall register their number and denomination, and they shall then be destroyed in the presence of the Auditor, Treasurer and Secretary of State, and the fact shall be recorded by the Auditor, and signed by him, the Secretary and Treasurer of State.

SEC. 7. The tax herein provided for the payment of the interest and the gradual liquidation of the principal, shall not be diminished, but the same shall be levied and collected annually, until the bonds herein authorized to be issued shall have been paid or redeemed.

SEC. 8. Nothing in this act shall be so construed as to require the continuance of the existing office of Agent of State, but the Legislature may at any time hereafter, in its discretion, select any person as Agent of State, and any place in the city of New York as the office of the Agency, under the provisions of this act: *Provided*, That notice of the person and place in said city be given by the Governor of the State of Indiana immediately, in one or more daily papers in the city of New York, by thirty days' publication thereof.

SEC. 9. Inasmuch as the ordinary revenue of the State is insufficient to meet the necessary expenses growing out of the present insurrectionary acts of certain States in the Union, it is hereby declared that an emergency exists; therefore this act shall take effect and be in force from and after its passage."

The act of Congress to indemnify the States is as follows:

(12th U. S. Statutes, 276.)

AN ACT to indemnify the States for expenses incurred by them in defense of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, directed, out of any money in the Treasury not otherwise appropriated, to pay to the Governor of any State, or his duly authorized agents, the costs, charges and expenses properly incurred by such State for enrolling, subsisting,

clothing, supplying, arming, equipping, paying and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers, to be filed and passed upon by the proper accounting officers of the Treasury.

Approved July 27, 1861.

Congress, in passing the act of July 27, 1861, passed it with reference to the liability of the States incurred at that time. To put at rest the question as to whether the law covered expenses payable in the future, the explanatory Joint Resolution of March 8, 1862, was passed: "That the said act shall be construed to apply to expenses incurred as well after as before the date of approval thereof." (12 U. S. St. 615.) This advance was made to the United States under a statute passed before the passage of the act of 1861, but in view of the well known law of the case as declared by statute, by the courts and by the opinions of the Attorney General of the United States, who had given opinions on similar claims, the State of Indiana understood full indemnity of principal and interest would be made. The facts and circumstances existing at the time, and laws previously passed in relation to the subject-matter, may be referred to, to determine the meaning of the law. We call attention to the following statutes:

The ordinance for settling the accounts between the United States and individual States of May 7, 1787 (1 Laws U. S. ed. 1815, p. 662,) proved that interest on such accounts, at the rate of 5 per cent. per annum, should be allowed. (See McKee *vs.* the United States, 91 U. S. Reports, 442, 10 Court of Claims, p. 234.) A large number of private acts were passed, settling voluntary claims, in which interest was allowed the claimants, States, and Cities were allowed interest for advances made by them for the United States where they paid or lost interest.

Interest was allowed the State of Delaware on war claims by the act of May 20, 1826. (4 U. S. Stat. 175.)

Also to Maryland, by the act of May 13, 1826. (4 U. S. St. 161.)

Also to New York. Act of May 22, 1826. (4 U. S. St. 192.)

Also to Pennsylvania. Act of March 3, 1827. (4 U. S. St. 241.)

Also to South Carolina. Act of March 22, 1832. (4 U. S. St. 499.)

Also to Virginia. Act of March 3, 1825. (4 U. S. St. 132.)

Also to city of Baltimore. Act of May 20, 1826. (4 U. S. St. 177.)

Also to Mayor and City Council of Baltimore. Act of April 2, 1830. (St. 111.)

By the act of April 18, 1814, the Secretary of State was authorized to liquidate according to the principles of justice and equity

all the claims of the inhabitants of the late province of West Florida * * * for advances by them made for the use and benefit of the United States. (6 U. S. St. 139.)

By the act of April 9, 1818, an appropriation was made for the discharging of the above claims, "including principal and interest," showing that the State Department considered interest equitably due under the statutes. (See 3 U. S. St. 422.)

Advances were made by individuals and the Territory of Florida in 1839 and 1840 to the United States, which were authorized to be settled by the acts of August 23, 1842 (5 St. 522), August 31, 1842 (5 St. 518), March 3, 1843 (5 St. 628). By the last statute the claims were to be settled "upon principles of justice and equity," under the direction of the Secretary of War. By joint resolution, March, 1845, (5 St. 797) the statutes were held to include "advances on loans of money made to provide for the defense of the inhabitants."

Under these statutes, $12,000 was paid to the Territory of Florida, September 9, 1842.

Bonds were issued, under the territorial act of March 4, 1839, in the sum of $100,000, to procure supplies, and holders of the bonds presented them to the Treasury Department *and received principal and interest* out of the appropriation. The Florida bonds to the full amount of principal and interest, which were paid at the Treasury, could not have been paid until examined and allowed by the accounting officers and directed by the Secretary of War to be paid. * * * They were paid as the proper debts of the United States. (5 Opinions of Attorney General, 401.) In the opinion the right of the State of Florida, to reimbursement of interest paid out by her for military services in 1849, was sustained as lawful under the terms of the act of February 27, 1851, which provided for reimbursing the State of Florida "under such rules and regulations as have heretofore governed the readjustment of similar claims of the several States for moneys advanced and paid." (See opinion of John J. Crittenden, Attorney General, 5 Opinions, 463–4.)

Alabama furnished supplies, etc., for the United States in 1836–7, which the Secretary of War was authorized to re-adjust "under such laws and regulations as have heretofore governed the settlement in auditing and allowing the claims of the States on the United States for moneys advanced," etc. (Act Aug. 16, 1842, 5 U. S. St., 506.) By the statute of January 26, 1849, the Secretary of War was directed to pay six per cent. interest on such advances. (9 U. S. St., 344.)

By the statute of June 30, 1834 (4 U. S. St., 721), full indemnity to citizens of Georgia for losses by the Creek Nation of Indians prior to 1802, included six per cent. interest from the origin of the claim to date of adjustment.

By the act of March 3, 1851, six per cent. interest was allowed to the State of Georgia on all advances made by her to the United States for the suppression of Indian hostilities in 1835–6–7–8, from the date of the advances to the date of the payment of the principal sum by the United States. (9 U. S. St., 626.)

At the same date the accounting officers of the Treasury were authorized and directed to liquidate and settle the claim of the State of Maine against the United States for interest upon the money borrowed and actually expended by her for the protection of the Northeastern frontier in 1839, 1840, and 1841. (9 U. S. St., 626.)

The same rule was established by the joint resolution of March 3, 1847, to refund to States and persons the expenses incurred by them for the United States. (9 U. S. St., 206.) By the amendatory act of June 2, 1848, this was extended to cover all expenses, and the third section enacted that "in refunding moneys under this act and the resolution which it amends, it shall be lawful to pay interest at the rate of six per centum per annum on all sums advanced by States, corporations, or individuals in all cases where a State, corporation, or individual paid or lost the interest, or is liable to pay it." (9 U. S. St., 236.)

This amendatory act is a legislative declaration that ("expenses") includes the item of interest, and the general rule which had governed these contracts between the States and the United States, to pay interest paid or lost, was thus expressly reaffirmed.

These statutes show that where interest was paid or lost by a State, it was held to be an *expense* incurred and *justly and equitably due the State.*

The United States enforces the payment of interest on money paid after it is due, as a matter of equity. (See *United States* vs. *Gurney*, 4 Cranch, 131.)

"The United States have no prerogative to claim one law upon their own contracts as creditors, and another as debtors. If, as creditors, they are entitled to interest; as debtors, they are bound also, to pay it." (*Story*, J., in *Thorndike* vs. *United States*, 2 Mass., 20; *Charles River Bridge* vs. *Warer Bridge*, 11 Peter, 611.)

Where the government guarantees state bonds, and pays interest for the State, it provides for reinbursement. (Sec. 481, Rev. St., p. 694.)

As held by the Supreme Court of the United States in *United States vs. McKee, et al.*, 1 Otto, 450, the rule of refusing interest on unliquidated claims is not uniform, and the case was held to be within the rules of the claims covered by the act of 1791, where interest was to be paid. The court also held the adjudication as to the State of Virginia to be binding upon the United States as to the allowance of interest, and as there was no dispute about the amount due if the claim was legal, it was a liquidated sum, and the government was bound to pay it in full, "with all its legal incidents as the State of Virginia should and would have paid it, had not the liability been assumed by the United States when she received the cession of that immense country." (*Ibid* 451.)

Our case is like this case. The legal interest to be paid was a liquidated sum before the passage of the act of 1861. It was paid by the State as agreed. It was a legitimate expense, and is covered by the amendatory act of 1862, which covers expenses to be paid after the date of the act of 1861. Having been paid, the United States dares not dispute the amount, but the comptroller wrongfully applies to this liquidated sum the rule which applies to unliquidated demands.

The Attorney Generals of United States have held as follows: Attorney General Wirt—"The principle is this: the United States are bound by the relation which subsists between the general and State governments to provide the means of carrying on war, and it is a part of the business of war to provide for the defence of the several States when the United States failed to make such provisions, and the States have to defend themselves by means of their own resources; the expenditure thus incurred forms a debt against the United States which they are bound to reimburse. If the expenditures made for such purpose are supplied from the treasury of the State, the United States reimburse the principal without interest, but if, being itself unable, from the condition of its own finances, to meet the emergency, such State has been obliged to borrow money for the purpose, thus to incur a debt on which she herself has had to pay interest, such debt is essentially a debt due by the United States, and both the principal and interest are to be paid by the United States." (1 Opinions Atty. Genl., 721, June 25, 1825.) He also held, (2 Opinions, 33,) that "the interest, *according to the usage of nations*, is a necessary part of the just indemnification by the Emperor of Russia." Attorney General J. McBarien, in refusing the allowance of interest on commutations, held the case to be within the class of or-

dinary claims against the government—"which, however undoubted, are not payable until demanded, and then without interest *unless the claimant shall have paid interest*, in which case, indeed, interest becomes a portion of the principal of his claim." (2 Op., 392.) Attorney General B. F. Butler held that a private law for the relief of James Thomas according to *equity and justice* includes the allowance of interest, because it was not inconsistent with the terms of the law, although not expressly named, because the decision of the court referred to in the act gave interest, and also because in looking into the original contract and all the papers, he found "the claim to interest is agreeable to equity and justice." (3 Opinions Atty. Gen., 295.) Attorney General H. L. Legare held that when an account was adjusted by the comptroller under a special act, and no allowance was made for interest, under the impression that interest ought not to be allowed, and the present comptroller and his predecessor who made the mistake, admit that the act did not allow interest; that the claimant on proof that he was not allowed interest, was entitled to have the case reopened and interest allowed up to the adverse decision. That the claimant has had incurred heavy losses for the public good, "and would not have been indemnified for his sacrifice by repayment of the principal. Fortunately, however, for his representative, he was not left to stand upon the equity, just and and manifest as it was, of the case. The statute expressly *provided for the allowance of interest*, and if it was not taken into consideration in the adjustment finally made, the statute law has not been executed according to its true meaning and intent," (4 Op., 80.) Attorney General Nelson—That the United States was liable for interest on a protested draft of its minister on the ground that "when the United States, by its authorized officer, became a party to negotiable paper, they have all the rights and incur all the responsibilities of individuals who are parties to such instruments." (4 Op., 299.) Congress having authorized the second Auditor of the Treasury to examine and adjust the claims of the legal representatives of Geo. Fisher deceased "on principles of equity and justice" under the act of April 12, 1848, for losses in 1813, the second Auditor held the value of the property taken or destroyed with interest upon it was to be paid "as a full and fair indemnity." Attorney General Isaac Taney held that interest at the rate of 6 per cent. per year should be allowed from the date of taking or destruction. (5 Op. 71.)

An act authorizing the Secretary of State to adjust the claim of

Jos. D. Lea. Francia, for supplies furnished in West Floridas, "according to principles of equity and justice," passed August 14, 1848, Secretary Jno. M. Clayton referred the case to Attorney-General Reverdy Johnson, who decided that "the propriety and obligation therefor of allowing interest upon them are not to be esteemed open questions." (5 Op. 109.) Also, that interest at the rate of six per cent. should be allowed from the date of the claim to August 14, 1848, on the ground that it would be unjust to deny interest during the interval when the accounting officers refused to allow the claim.

That "every principle of equity and justice prescribes a different rule, and the act requires those principles to govern the liquidation." (*Ibid* 110.)

Commutation pay, but not interest, was allowed the heirs of Armstead, on the ground that Virginia did not allow interest. (*Ibid* 164.)

Interest was allowed the estate of Commodore Barron, as in accordance with Virginia decisions and former decisions of Attorney General. (*Ibid* 227.)

In the Galphin claim, the law for auditing the account made no reference to interest, but the Attorney General held that it was of the same character as the Virginia commutation cases, and that interest up to the date of the passage of the act should be allowed. (*Ibid* 231.)

The opinions of Attorney General Cushing, on the allowance of interest on the postal contract, conforms to the law in such cases, but is not a guide for the case in question, as it refers to ordinary and unliquidated claims. (7 Opinions 523.)

The uniform construction of an act of Congress by the Treasury Department is entitled to respect in the courts, but being *ex parte*, can not conclude them. This was the rule in *United States* v. *Dickson*, 15 Pet., 162, relating to the bond of a receiver of public money, the court held that the act must be construed "upon the same principles by which we ascertain the interpretation of all other laws; by the intention of the legislature as it is to be deduced from the language and the apparent object of the enactment." (*Ibid* 162.)

The contracts of the sovereign are subject to the same rule as those of private persons. *United States* vs. *Wilder*, 3 Sumner, 316; *United States* vs. *Barker*, 12 Wheat., 561.

This claim under the statute in question must be construed with reference to the rule of construction, that "What is implied in a statute is as much a part of it as what is expressed." *United States*

vs. *Babbit*, 1 Black., 61; *Gelpcke* vs. *City of Dubuque*, 1 Wall., 221; *Mayor* vs. *City of Muscatine*, 1 Wall., 393; *Croxall* vs. *Shererd*, 5 Wall., 283; *Kennedy* vs. *Gibson et al.*, 8 Wall., 507; *Butz* vs. *City of Muscatine*, 8 Wall., 581; *United States* vs. *Hudson*, 10 Wall., 406; *Stewart* vs. *Kahn*, 11 Wall., 507; *Lynde* vs. *The County*, 16 Wall., 13; *Davis* vs. *Gray*, 16 Wall., 223; *Bulkley* vs. *United States*, 19 Wall., 40; *Telegraph Co.* vs. *Eyser*, 19 Wall., 427; *Cornett* vs. *Williams*, 20 Wall. 251.

Another rule of construction should be followed in this case: "Courts, in the construction of contracts, look to the language employed, the subject matter, and the surrounding circumstances; they are never shut out from the same light which the parties enjoyed when the contract was executed, and in that view they are entitled to place themselves in the same situation as the parties who made the contract so as to view the circumstances as they viewed them, and so to judge of the meanings of the words and of the correct application of the language to the things described." *Nash* vs. *Towne*, 5 Wall., 699. And we insist that Congress, in construing the act of July 27, 1861, should be governed by the same rule.

Indiana claims that there is due to her from the United States $362,186.51 for interest paid on her "War Loan Bonds."

She claims this because the act of July 27, 1861, *authorizes* and *requires* the accounting officers of the Treasury Department to pay it.

She claims it because it was a legitimate and proper expenditure under the circumstances.

She claims it because the United States had no money, and to raise, arm and equip the troops, money was necessary; the State did not have this money, and was, therefore, compelled to borrow it to pay these expenses, and, as a consequence, was compelled to pay interest on the money borrowed.

She claims that to refuse to pay back the money thus expended by her is unjust, and is not carrying out the true spirit and intent of the law.

She insists that the principle on which the claim here made is based, has been repeatedly recognized by the government in similar cases prior and subsequent to the passage of the act of July 27, 1861, as will appear from the precedents cited above.

She claims that when Congress passed this act, it did so in the light of all previous rulings of the government in like cases.

She claims that rulings and decisions made prior to the act of July 27, 1861, were necessarily considered by Congress when this

law was passed, and that the interpretation given by the accounting officers, by Congress and the courts, to like provisions in similar cases, would be given in interpreting this law.

We now call attention to what we deem a proper interpretation of the act of July 27, 1861, without reference to any precedents.

The act of July 27, 1861, is as follows: "Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, directed out of any money in the Treasury not otherwise appropriated, to pay to the governor of any State, or to his duly authorized agents, the *cost, charges and expenses* properly incurred by such State for enrolling, subsisting, clothing, supplying, arming, equipping, paying and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled," etc.

Does not the claim here presented fall within the provisions of this act? Was not the interest paid by the State a part of the "cost, charges and expenses" intended to be covered by this act? How could the purpose have been accomplished without this expenditure? In order to raise it she was compelled to issue bonds, and to pay interest on the bonds; the interest suffered and paid by the State formed a part of the debt.

Should there be any two opinions on this question? Can there be?

If the State had not raised the money by issuing bonds, the United States would have been compelled to raise it in the same way. She would have had to borrow money and pay interest. The State then issued her bonds and raised the money instead of and in the room and place of the United States. The State paid the interest the United States would have been compelled to pay if she had issued the bonds. We then ask, upon what principle of justice or equity can the government refuse to pay a debt she would have been required and compelled to pay if the State had not paid it. Can it be said that because the State came forward and loaned her credit, borrowed money for the United States, and paid her debts, and in doing so, and in order to raise the money, paid the same interest the United States would have been compelled to pay if it had borrowed the money, can the government in common honesty say this is *interest*, and the government does not pay interest? And this because of the presumption that the government is always ready to pay all her just obligations. While this is true as a rule, it is not true in point of fact. We do know that when the war began there was an empty treasury, the bonds of the United States were being sold

at a discount, and with all these facts staring us in the face, we are met with this rule as an answer to our just demand.

When it is shown that the United States did not have the money, but was compelled to resort to loans to furnish any money, the rule is not applicable.

This is not interest in the light contemplated by the rule, that the government will not pay interest. It is as much a part of the debt as the bonds themselves were. If the money had been in the State treasury, then the State would not have been compelled to borrow money, but she was in the same condition financially that the United States was—she did not have it.

These then being the facts in the case, was not this expenditure a part of the "cost, charges and expenses properly incurred by the State?' There can be no question but that it cost the State the amount claimed to raise the money. There can be no question but that these sums expended were expended on account of "enrolling, subsisting, clothing, supplying, arming, equipping, paying and transporting its troops employed in aiding to suppress the rebellion." Were they properly expended? This is matter of evidence—the proofs show it was. If the sums so expended were properly expended, and formed part of the necessary "cost, charges and expenses," etc., is the State not entitled to recover the money thus expended? If not, for what reason? Can any valid reason be assigned? We submit that there can be none, for none exists.

What do the various words of the act of July 27, 1861, mean? The language is "cost, charges and expenses." Webster says the word "cost" means "amount paid, charges, expenses, loss of any kind, detriment, to require to be given or expended for, to require to be borne or suffered."

The word "expense" he says means, first, "The act of expending, disbursement, that which is expended.' The word "expended" he says means "To employ in any way; to consume by use."

In the connection in which the words are used, the words cost, charges and expenses mean substantially the same thing. These several words were used to make the act broad and comprehensive, to prevent a narrow, *small* or *technical* construction. Congress was then legislating upon a great and important subject, one that was more important than money. It was one that was more important than life. It was the life of this nation that Congress was legislating for. And Congress did not intend that any narrow or technical construction should be given to the words used, therefore all the

words were used that were necessary to cover all the proper expenditures that were to be made by the States in purchasing arms, equipments, etc., for the troops. Under the circumstances, could the purposes of the act have been accomplished without borrowing the money? The State did not have it—she could only get it by issuing her bonds and selling them. Then, if the money could be obtained in no other way, was not this interest paid "*properly*" expended? Was it not a necessary part of the "costs, charges and expenses" provided for in this act? We think there can be no question but that this expenditure by the State is a legal and legitimate claim to be allowed and paid under this act.

But it is said by the Comptroller, that the act under which this opinion was given, authorizes the payment of interest, and of course is not authority for such payment, when not specifically authorized by law. We attempted to show that the claim here made was *specifically authorized* by law; it is authorized by the act of July 27, 1861, because it was a part of the "cost, charges and expenses" of raising, arming and equiping the troops, etc. It was *specifically authorized*, because the interest paid was a part of the amount *necessarily* paid by the State for the purpose of enabling the State to perform the object contemplated by the act, and is as fully embraced by the act as was done, in the act of 1825, referred to in the opinion of the Attorney General.

We only claim for money actually expended actually authorized by the act of 1861.

We do not claim interest on our claim for expenditures. We only claim for money paid out to raise the money to pay the expenses authorized by the act of 1861. This claim is so clearly distinguishable from a claim for interest, within the rule established by the government, that it would seem to argue it would be a waste of time. The distinction has been recognized by all, adopted and acted upon by the Second Comptroller. It is said that it was done under the act of twenty-seventh of February, 1851, vol. 9, p. 573, because it provides for reimbursing Florida for moneys advanced and paid, and for *expenses incurred* and *obligations contracted* by said State for subsistence, supplies and services of local troops, etc. He thinks this language is much stronger and more comprehensive than the language used in the act now under consideration. Is it? The act of 1861 requires that the States shall be reimbursed for all "cost, charges and expenses properly incurred by such State for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its

troops, employes," etc. Is not this language much stronger and more comprehensive than that used in the Florida act? In that act the words "obligations contracted" are used. Do these words cover more than those used in the act of 1861? Under this act the government is required to pay the "cost, charges and expenses properly incurred," etc. Could any other conceivable matter be covered? If so, what is it?

Attention was called to the definition of the words used in the act of July 27, 1861, to show their broad and comprehensive meaning; further comment would seem unnecessary. The money was paid out by the States; it was employed and expended in order to get the money that paid for the arms, equipments, etc. It was a part of the amount paid—a part of the charges incurred by the State; it was a loss to the State, because it was paid out; it was disbursed by the State; it was required to be borne and suffered by the State; therefore we submit that it was much broader language than that used in the act to reimburse Florida. There is no question but that Congress intended to reimburse the State for such expenditures. It was contemplated at the time that the States should furnish the money to pay these expenditures by lending their credit, by borrowing the money. Will or can any one presume that those members who voted for this bill in Congress, were so narrow, so small that they intended to induce the States to borrow this money, pay interest for it, and then, after they had done so, say we did not intend to pay you back this interest? The government never pays interest; it is contrary to her policy to pay interest. Oh, it will never do to pay you the interest you were compelled to pay, though it was a part of the cost, charges and expenses incurred. Interest can not be paid. Can any honest man say this and look his neighbor square in the face? Is it honest so to act; is it obeying the law? If I should say to my neighbor, I am in trouble, am in danger of losing all I possess; come to my aid, do all you can to save me from destruction, from ruin; pay the cost, charges and expenses, and I will reimburse you; I will pay all the cost, charges and expenses you may properly incur in saving me, and I say to him I have no money, (this is what the United States said in effect—she did not have it,) you raise the money, and I will pay you the cost, charges, etc.; and after I am saved, and all is secure, I turn upon my neighbor and say I will pay you all except the interest you paid on the money you borrowed, can't pay that; I have a rule that no interest is to be paid; I am wealthy, and the presumption is I have the money to pay all

my debts; I can not pay you interest, though. If I had honest neighbors, how long would I be permitted to remain in that locality and enjoy the society of honest men (on the assumption that I could not be sued without my consent.)

If the government refuses to pay this interest, suffered and paid by the States, she assumes the position above indicated. A great government should not put herself in such a position, and I can not think, when this question is carefully considered, she will do so.

RULING OF SECRETARY OF THE TREASURY ON APPLICATION TO ALLOW ACCOUNT.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., June 27, 1878.

To the Secretary: Application of the State of Indiana that the Comptroller of the Treasury be directed to review and restate the account of that State against the United States, and allow $362,-186.51-100, being the amount of interest paid on her war loan bonds as "expenses" incurred under the act of Congress of July 27, 1861.

This claim was presented to the Treasury by the authorities of the State of Indiana, on May 26, 1868, and was disallowed by the accounting officers. The facts were then stated substantially as now, to-wit: That the State, at the breaking out of the rebellion, was without funds, and that she issued in good faith, and at fair rate of interest, bonds to the amount of $2,000,000, for the sole purpose of aiding in suppressing the rebellion, and that the money thus raised was properly expended in good faith for that purpose, and the amount claimed was actually paid as interest on said bonds.

It is alleged that the Comptroller made a mistake in matter of fact in this: That he treated the claim as interest upon an account as if the money had been on hand in the State treasury and advanced for the purposes named, instead of being an actual payment of interest upon bonds issued solely for such war purposes. It is true that the Comptroller based his opinion on the report of the Auditor on the claim of the State of the Rhode Island for interest on money advanced by her for similar purposes, but that he misapprehended the fact in that regard in the Indiana case, can not be possible, because, as before stated, the first application of the State of Indiana distinctly states the facts as now stated, that the claim was not for interest upon money which the State had in its treasury,

and advanced, but it was for interest actually paid out upon bonds specially issued for the purpose of suppressing the rebellion, and kept entirely separate from her other funds. It is claimed, also, that the Comptroller made a mistake of law in this, that he decided that the interest thus paid on said bonds was not an "expense" under the act of Congress of July 27, 1861, whereas he should have held it to have been legally a part of such "expenses." Without discussing the question whether, after the lapse of ten years, the present Comptroller can legally overrule, upon his own opinion of the law, the opinion of his predecessor, I think the application must be rejected for reasons which I will proceed to state.

The claimant's attorneys have cited authorities to show that interest upon claims of similar character for money expended by States in aid of the United States government in other wars, has been allowed, and some cases are cited showing that the Attorney General and other officers have, in some cases, made the distinction between interest upon money merely advanced by such States, and interest paid upon money borrowed for the specific purpose. The authorities on this point are numerous and somewhat conflicting. Most of those now cited by the claimant are cited in the opinion of the Third Auditor upon the Rhode Island claim, to which express reference is made by the Comptroller in his first rejection of this claim. It is difficult, upon equitable principles, to maintain the distinction suggested, because it would seem that money advanced out of its general funds by a State largely in debt for general purposes, is as much entitled to bear interest as money borrowed for the specific purpose. Payment of interest, in either case, is a burden upon the State borne for the same cause. It is unnecessary to look at the authorities upon the subject further than the case of the *United States* vs. *McKee et al.*, (91 U. S. Reports, p. 442,) which has been cited by the claimant, and is the latest, as well as the highest, authority upon the point. In that case the court, with two dissenting voices, decided that the claim of the heirs of Francis Vigo, on account of supplies furnished by him in 1778, to a Virginia regiment, was entitled to bear interest. The claim was allowed under an act of Congress, which referred it to the Court of Claims, with power to adjust it, "and in making such adjustment and settlement the said court shall be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases," etc.

A long list of similar cases was cited in which Congress had expressly allowed interest. The Court of Claims allowed interest upon

the claim and found that "no rules and regulations have heretofore been adopted by the United States in the settlement of like cases, except what may be inferred from the policy of Congress in passing private acts for the relief of various persons." When passing such private acts "Congress has allowed interest upon the claim up to the time when the relief was granted." And it was upon the ground that this statute intended to award interest upon this particular claim, that the Supreme Court affirmed the allowance by the Court of Claims.

The rule that the United States does not pay interest, except in cases where Congress expressly authorizes it, seems to be generally admitted. Justice Clifford, who dissented in the McKee case, states the general principle no doubt correctly, as follows:

"Unless where the contract is expressed to that effect, the United States are not liable to pay interest. Interest should never be allowed on old claims when payment has been deferred because the accounting officers of the Treasury were of the opinion that further legislation was necessary to authorize their allowance, unless the new law clearly provides for the payment of interest as well as principal."

In the case before us, the claimant contends that the act of Congress did provide for the payment of this claim as part of the "expenses" claimed to be paid. The accounting officers in 1868 thought otherwise, and I think this department should regard the question as *res adjudicata*.

It is clearly an equitable claim, but not more so than the claims of several other States for interest on money borrowed or advanced for the same patriotic purpose, and which Congress alone has power to allow.

This brings me to my last proposition, which is, that this claim and others like it, have already been presented to Congress and there received some consideration.

December 6, 1872, Mr. Morton in the Senate of the United States, by unanimous consent had leave to bring in a bill "to refund to the States the interest on money borrowed to equip, pay, supply, and transport troops for the service of the United States in the recent war."

The bill was read twice and referred to the committee on military affiairs and ordered to be printed, and a copy of it is with the papers.

We have in many cases acted upon the principle which is found in Fuller's case (4 Opinions of Atty. Genl., 429), to-wit:

A claimant who appeals to Congress after an unsuccessful application at the department, must abide by his election whether the result be favorable or otherwise.

I think this principle can be wisely applied to a case like this, which is a representative of a large class, involving very large amounts and affecting several of the States. Such cases are peculiarly entitled to the consideration of Congress.

For these reasons I think the direction to the comptroller to open and restate the account should not be given.

Very Respectfully,

H. F. FRENCH,
Asst. Secretary.

Endorsed as follows:

Approved,

JOHN SHERMAN,
Secretary.

The State of Indiana is now compelled to come to Congress and ask that provision be made for the payment of a claim that is admitted by the department to be just and equitable, but one that can not be paid by the executive branch of the government. The Second Auditor says in his decision on this claim, "When the condition of the country is considered at the time these expenses were made, the heroic efforts of the loyal States to sustain our country in this the time of her greatest trial, it is clear, in my opinion, that Congress should authorize the refunding not only of the interest paid to raise money, but of all expenses, drawbacks, etc.; in fact, of every dollar paid by any such State, directly or indirectly, in support of this holy cause; but I am clearly of the opinion that the accounting officers of the Treasury have no power so to refund without the action of Congress."

Secretary Sherman, in ruling on the application of the State to open and allow this account, uses the following language: "*It is clearly an equitable claim,* but not more so than the claims of several other States for interest on money borrowed or advanced for the same patriotic purpose, and which Congress alone has power to allow."

We ask Congress to make provision for the payment of this claim, because it is just, and because it is *honestly* due.

In the brief presented to the Secretary we called attention to the several acts of Congress, the rulings of the Attorney General, the

decisions of the Court of Claims and the Supreme Court, and thus show that claims of the same nature of this have been paid by the government without a single exception. No claim of this character has ever been rejected, and we think no such claim should ever be.

In the case of *United States* vs. *McKee et al.*, (91 U. S. Supreme Court Reports, from page 445 to 447, inclusive,) in the argument of counsel reference is made to the several acts of Congress allowing interest on war claims. The position assumed by counsel is fully approved by the Court.

This claim is not for interest claimed to have accrued on an unliquidated claim in favor of the State against the United States, but it is a claim for interest paid by the State for the use and benefit of the United States—money expended for her.

Therefore, the claim here made is much stronger, and more equitable, than any of the cases referred to in the McKee case.

The bill only provides for the payment of the claim for interest paid on her War Loan Bonds. She abandons the claim for discount suffered, etc.

T. W. Woollen,
Attorney General of Indiana.

C. A. Buskirk, J. & M. Trimble, R. G. & E. C. Ingersoll, J. C. Denny, of Counsel.